

June 1, 2018

Marlene Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

Re: 2014 Quadrennial Regulatory Review *et al.*, MB Dockets 14-50, 09-182, 07-294, 04-256, 17-289  
Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies; Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2); MB Dockets 98-204, 16-410, 18-23  
Modernization of Media Regulation Initiative, MB Docket 17-105

Dear Ms. Dortch:

On Wednesday, May 30, 2018, meetings were held among: (Meeting #1) Michelle Carey, Chief, Media Bureau ("MB"); Jamila Bess Johnson, Designated Federal Officer, Advisory Committee on Diversity and Digital Empowerment; Lyle Elder, Assistant Division Chief, MB, Policy Division ("PD"); Mary Beth Murphy, Deputy Bureau Chief, MB; Martha Heller, Division Chief, MB, PD; Jonathan Mark, Attorney Advisor, MB, PD; Radhika Karmarkar, Deputy Division Chief, MB, Industry Analysis Division; Jason Chun, MB Fellow; James Winston, President, National Association of Black Owned Broadcasters ("NABOB"); Maurita Coley, Acting President, Multicultural Media, Telecom and Internet Council ("MMTC"); Bettina Tran, MMTC Fellow; Alexandra Milliard, MMTC Fellow; and me; (Meeting #2) Evan Swarztrauber, Policy Advisor to Commissioner Carr; Marcella Gadson, Director of Communications, MMTC; Mr. Winston, Ms. Coley, Ms. Tran, Ms. Milliard and me; (Meeting #3) Kate Black, Policy Advisor to Commissioner Rosenworcel; Ms. Gadson, Mr. Winston, Ms. Coley, Ms. Tran, Ms. Milliard and me; (Meeting #4) Chairman Ajit Pai; Alison Nemeth, Legal Advisor to Chairman Pai; Matthew Berry, Chief of Staff; Ms. Gadson, Mr. Winston, Ms. Coley, Ms. Tran, Ms. Milliard and me; and (Meeting #5) Commissioner Michael O'Rielly; Brooke Ericson, Chief of Staff and Senior Legal Advisor, Media, to Commissioner O'Rielly; Mr. Winston, Ms. Coley, Ms. Tran, Ms. Milliard and me. During the meetings, Ms. Coley, Mr. Winston and I presented our organizations' positions on the following issues:

- AM-FM Radio Subcaps (Meetings 1, 2, 3, 4, and 5): The subcaps are the number of AM or FM stations a company may own in a market as a portion of the total cap of radio stations it may own in the market. If, for example, a company were to own eight FM stations and zero AM stations in a large market, AM radio would suffer, as AM equipment manufacturers would stop designing improved AM equipment, and the top engineering firms would stop doing AM work because it would not be economically feasible. Elimination of the FM subcap would lead to a rapid deterioration in the AM service and undermine the Commission's AM revitalization efforts. Since AM stations are disproportionately minority owned, eliminating subcaps would further disadvantage minorities by diminishing minority broadcasters' asset value and growth and survival potential. Were the Commission to eliminate subcaps, it should consider eliminating only AM subcaps, allowing the ownership of as many as eight AM stations in a market, which could encourage more AM ownership and retain a fully functional AM radio industry.

- Broadcast EEO (Meetings 1, 2, 3, 4, and 5): On July 3, 1968, almost 50 years ago to this day, the FCC became the first federal agency to require its licensees to practice employment nondiscrimination. Yet discrimination is still practiced through a device called “cronyism” through which broadcasters with homogenous staffs recruit primarily through word-of-mouth (WOM), perpetuating lack of diversity in the industry across generations. This practice is inherently discriminatory and needs to be enforced by the FCC. First, the agency should determine if a station recruits primarily through WOM and not online (or otherwise broadly) and through community groups. Then, if the station is violating the “broad recruitment” rules, the agency should ask the station to submit, *in camera*, a Form 395. If the FCC determines that the station’s staff is homogenous and that the broad recruitment requirement has not taken place, then the agency should institute enforcement action. Further, the agency should reform its audit program so it can verify that hiring decisions are made after jobs are posted, and not before. The agency should also collect and publish an annual summary of Form 395 data to evaluate equal opportunity in broadcast employment. Finally, it should re-locate the EEO staff to the Enforcement Bureau in order to make EEO enforcement more effective and efficient. Finally, we recommend that on July 3, 2018 – the 50<sup>th</sup> anniversary of the EEO Rule - the FCC issue a statement reconfirming that the use of WOM recruitment from a homogenous workplace is inherently discriminatory and confirming that such discrimination will be prosecuted.
- Incubators (Meetings 1, 2, 3, 4 and 5; on this item, Mr. Winston, Ms. Coley and I participated in our capacities as members of the Advisory Committee on Diversity and Digital Empowerment (“Diversity Advisory Committee”): In 1990, NABOB originated the concept of an incubator program, under which a broadcaster would provide an ownership rule waiver (or other incentive) to a company that creates a new voice in the market. The incubation program serves as the rules and policies for promoting new entry and ownership diversity in the broadcasting services industry. The Commission issued an NPRM proposing how the concept would take shape. The NPRM considers such questions as which entities are eligible for participation, what incubation activities are qualifying, what benefits/incentives would accrue to the incubation station, what would be the review process for incubation proposals, how the Commission would monitor compliance, and costs and benefits. The Diversity Advisory Committee submitted an incubator proposal on April 1, 2018. There are two key issues driving the current debate over the Diversity Advisory Committee’s incubator proposal: (1) eligibility, and (2) incentives. Regarding eligibility, the NAB prefers a “new entrants” criterion to the “Overcoming Disadvantages Preference” (“ODP”) that was endorsed unanimously by the Diversity Advisory Committee. If a new entrants criterion could be rendered immune to exploitation by sham structures being held out as incubators, and if the ODP could be used as an alternate route for eligibility, it may be possible to harmonize the Diversity Advisory Committee’s and NAB’s approaches. Regarding incentives, we feel strongly that the tax-based incentives proposed by the Diversity Advisory Committee are preferable to the waiver-based model proposed by the NAB. A waiver-based model would be certain to embroil the program in the media structural ownership litigation by opening up the program to allegations that it diminishes ownership diversity, resulting in there being no program at all. Further, if there were a waiver incentive, Congress would surely not undertake to pass legislation adding an additional tax incentive; thus, the Commission’s and most stakeholders’ decades-long hopes for tax legislation to advance ownership diversity would die an needless death if the waiver model were pursued. The

Commission should follow the unanimous recommendation of the Diversity Advisory Committee and attempt to secure legislative approval for a tax-based incentive model.

- Pirates (Meetings 1, 2, 3, 4, and 5): For years, individuals have created “pirate” stations in cities across the United States. These stations are not licensed by the FCC and steal advertising revenue from licensed broadcasters that are required to fulfill FCC localism and other requirements, and that invest in the communities to which they are licensed. The cutbacks in the FCC’s field offices have had a negative effect on the agency’s piracy enforcement capacity. The enforcement process involving the DOJ is a lengthy process and allows the pirates to relocate. The FCC has had success seizing equipment and targeting landlords but that is not enough. The FCC needs legislation providing it with additional enforcement powers to shut down pirates and eliminating its reliance on the DOJ for enforcement authority. Finally, the Commission should make it clear that it will enforce the law equally throughout the nation regardless of the race of a neighborhood’s residents.

At each meeting we provided copies of the following documents:

- Comments of EEO Supporters, April 30, 2018, available at <https://ecfsapi.fcc.gov/file/1050170956975/EEO%20Supporters%20Comments%20043018.pdf>
- Response of EEO Supporters, May 29, 2018, available at <https://ecfsapi.fcc.gov/file/10530068835044/EEO%20Supporters%20Response%20Ltr%20052918.pdf>
- ACDDE Incubator Comments, April 1, 2018 (pp. 1-7: Summary), available at <https://ecfsapi.fcc.gov/file/1040125142431/ACDDE%20Incubator%20Comments%20040118.pdf>
- What Will Take Down Radio Pirates, by David Honig, Radio World, May 22, 2018, available at <https://www.radioworld.com/columns-and-views/what-will-take-down-radio-pirates-and-what-wont>

This letter is being filed electronically pursuant to Section 1.1206 of the Commission’s Rules.

Sincerely,

*David Honig*

David Honig  
President Emeritus and Senior Advisor  
Multicultural Media, Telecom and Internet Council  
1919 Pennsylvania Ave. NW, Suite 725  
Washington, D.C. 20006  
202-669-4533  
[dhonig@mmtconline.org](mailto:dhonig@mmtconline.org)

cc: Hon. Ajit Pai, Hon. Jessica Rosenworcel, Hon. Brendan Carr, Hon. Michael O’Rielly, Matthew Berry, Alison Nemeth, Kate Black, Evan Swarztrauber, Brooke Ericson, Michelle Carey, Jamila Bess Johnson, Lyle Elder, Mary Beth Murphy, Martha Heller, Jonathan Mark, Radhika Karmarkar, and Jason Chun.